

THE UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD L. SMITH

Plaintiff,

Case No. 07-14341

vs.

DISTRICT JUDGE LAWRENCE P. ZATKOFF
MAGISTRATE JUDGE STEVEN D. PEPE

LAKEFRONT LINES, INC.

Defendant.

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ORDER TO SHOW CAUSE REGARDING DKT. # 18

On October 12, 2007, Plaintiff filed a Complaint alleging Defendant's failure to comply with the Family Medical Leave Act, 29 U.S.C., § 2601 *et seq.*, when they did not allow him to return to work after he was healthy enough to do so (Dkt. # 1). On March 14, 2008, Defendant filed a Motion to Compel Discovery (Dkt. # 18) which was referred for hearing and determination on March 17, 2008 (Dkt. #19). For the following reasons, Defendant's motion is **GRANTED**. On or before Thursday July 10, 2008, Plaintiff is ordered to either comply with Defendant's discovery request or show cause as to why his Complaint should not be **DISMISSED**.

Defendant first served discovery requests on Plaintiff on January 25, 2008. Written responses were due on February 27, 2008.¹ Counsel for the parties agreed that the date for filing

¹ Federal Rules of Civil Procedure require responses to these discovery requests within thirty days; Fed.. R. Civ. P. 6 (d) and this Court's Electronic Filing Policies and Procedures R. 15(b) add three days for mail and electronic service.

written responses could be extended to March 10, 2008. On March 14, 2008, Defendant's counsel attempted to call Plaintiff's counsel, but for the third time in 10 days such efforts were unsuccessful (Dkt. # 18, p. 6).

On May 2, 2008, District Court Judge Lawrence Zatkoff granted Plaintiff's attorney's request to withdraw as Plaintiff's counsel (Dkt. # 25). Plaintiff's counsel sought withdrawal given an inability to contact for a period of several months. Plaintiff has not procured new representation and is presently *pro se*.

Plaintiff has not responded to Defendant's discovery requests or participated in the litigation at all. Defendant's most recent letter to Plaintiff, dated June 9, 2008, has not received a response (Dkt. # 18). *Pro se* litigants, while not expected to have mastered the details of legal process and procedure, must make good faith efforts to proceed with their suit.

Federal Rule of Civil Procedure 37 provides that "on notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Fed. R. Civ. P. 37(a)(1). Federal Rule 37 also provides for the imposition of sanctions for the failure to comply with a court order. Fed. R. Civ. P. 37(b).

Federal Rule 37 "establishes the mechanisms" by which other rules of discovery "can be made effective." 8 WRIGHT, MILLER & MARCUS FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 2281. Rule 37 provides that "serious consequences," including dismissal of a claim, may be appropriate for "any party or person who seeks to evade or thwart full and candid discovery." *Id.* Under this Rule, Defendant has filed numerous motions seeking Plaintiff's compliance with discovery.

Federal Rule of Civil Procedure 41 provides for involuntary dismissal when "the plaintiff

fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b). *See Link v. Wabash R. Co.*, 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734, 6 Fed. R. Serv. 2d 831 (1962) (Court may *sua sponte* dismiss case on account of plaintiff’s failure to prosecute). Federal Rule 41(b) grants district courts the inherent authority to involuntarily dismiss a suit “if the ground for dismissal is want of prosecution.” 9 WRIGHT, MILLER & MARCUS FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 2369.

To date, Plaintiff has neither complied with discovery nor sought to advance his lawsuit against Defendant. Accordingly, on or before Thursday July 10, 2008, Plaintiff shall either comply with Defendant’s discovery request or show cause as to why his Complaint should not be **DISMISSED**.

NOTICE TO PLAINTIFF – failure to comply with this order will result in dismissal of your law suit under Fed. R. Civ. P. 37 and 41.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and LR 72.1(d).

So Ordered.

Date: June 25, 2008.
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ***Order*** was served on the attorneys and/or parties of record by electronic means or U.S. Mail on June 25, 2008

s/ Jermaine Creary
Deputy Clerk